

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

TERRY KILGORE SR., *et al.*,

Plaintiffs,  
vs.

Case No. 1:05-cv-256  
Spiegel, J.  
Black, M.J.

CITY OF CINCINNATI, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION<sup>1</sup> THAT DEFENDANTS' UNOPPOSED  
MOTION DISMISS BE GRANTED, AND THIS CASE CLOSED, PURSUANT TO  
BOTH DEFENDANTS' MOTION (Doc. 23) AND THE COURT'S PENDING  
SHOW CAUSE ORDER (Doc. 25)**

Plaintiffs initiated this action on April 14, 2005 by filing a *pro se* complaint pursuant to 42 U.S.C. § 1983 against multiple defendants, including officers of the City of Cincinnati SWAT team. (Doc. 1.) Plaintiffs' complaint alleges false arrest, false imprisonment, unreasonable search and seizure, and intentional infliction of emotional distress. *Id.*

On May 23, 2006, Defendants City of Cincinnati, Police Chief Thomas Streicher, Officer Chris Bihl, Officer Jeff McKinney, and Officer Debbie Mercado filed a motion to dismiss for lack of prosecution, as a result of Plaintiffs' failure to respond to Defendants deposition requests and discovery requests. (Doc. 23.) Plaintiffs did not respond to the motion and, on July 5, 2006, the Court issued an Order directing Plaintiffs to show cause

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

in writing within fifteen days of the date of the Order why Defendants' motion to dismiss should not be granted for the reasons stated in the motion. (Doc. 25.)

Plaintiffs have not responded to the Court's pending Show Cause Order nor to Defendants' motion. As a result of Plaintiffs' failure to respond to Defendants' deposition requests, failure to respond to discovery requests, and failure to respond to the Court's pending Show Cause Order, the Court finds dismissal an appropriate sanction in this matter. *See* Doc. 25 (*citing Link v. Wabash R.R.*, 370 U.S. 626, 630-31 (1962)).

**IT IS THEREFORE RECOMMENDED THAT:**

Defendant Bright's unopposed motion to dismiss (doc. 23) be **GRANTED**, and this case **CLOSED**.

Date: November 14, 2006

s/Timothy S. Black  
Timothy S. Black  
United States Magistrate Judge

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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **TEN (10) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **TEN (10) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981).